

By Megan K. Stack

From [The New York Times](#) | Original Article

With the question of whether Israel is committing genocide in Gaza now [before the International Court of Justice](#), the Biden administration has struck a tone of glib dismissal.

“Meritless” seems to be the agreed-upon term among U.S. officials. “The charge of genocide is meritless,” Secretary of State Antony Blinken intoned from a podium in Tel Aviv this week. “Meritless, counterproductive and without any basis in fact whatsoever,” blustered the National Security Council spokesman John Kirby.

The administration’s posture of indifference strains credulity. The 84-page case submitted to the court by South Africa is crammed with devastating evidence that Israel has breached its obligations under the 1948 international genocide convention, which defines genocide as “acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group.” The document before the court is meticulously footnoted and sourced, and many experts say the legal argument is unusually strong.

Top Israeli political and military leaders have themselves helped to bolster the case against their government. The words of Israeli officials are being offered as evidence of intent: from Prime Minister Benjamin Netanyahu [urging](#) Israelis to “remember” the Old Testament account of the carnage of Amalek (“Spare no one, but kill alike men and women, infants and sucklings,” reads one passage) to Defense Minister Yoav Gallant

[vowing](#) that “Gaza won’t return to what it was before — we will eliminate everything” to the minister of energy and infrastructure

[pledging](#), “They will not receive a drop of water or a single battery until they leave this world.” By speaking openly about destroying Gaza and dispersing its residents, Israeli leaders have publicized what has, in other cases of genocide, been hidden or denied.

There's no telling, of course, how effectively each side will argue or how the judges will rule. This week's hearings in The Hague will not answer whether Israel is committing genocide — that will come after a more painstaking collection and presentation of evidence and could take years. For now, South Africa has asked the court “as a matter of extreme urgency” to order Israel to halt its onslaught in order to protect Palestinians and preserve evidence. The panel of judges has to be convinced only that the accusation of genocide is plausible to order provisional measures in the coming days or weeks.

Even a determination that evidence suggests genocide would oblige the international community to protect the shellshocked, starving people of Gaza by demanding a cease-fire and flooding the Palestinians with aid. In the long run, the case could lay early groundwork for sanctions against Israel or the prosecution of its officials.

The proceedings are meaningful for the United States, too. The Biden administration has been the indispensable sponsor of this war — arming, funding and diplomatically shielding Israel despite increasingly dire reports of Palestinian death and displacement. If the violence in Gaza is found to be genocide, the United States could be charged with complicity in genocide, a crime in its own right. Given the sheer power of the United States and its track record of international impunity, the odds of any significant consequences may be small — but, nevertheless, Americans should understand that the case is substantial and serious and that their own government is implicated.

Israel and its U.S. backers will, of course, frame this differently. They will point out, correctly, that Israel suffered an intolerable blow on Oct. 7, when Hamas militants cut a path of atrocities through southern Israel, slaughtering hundreds of civilians and dragging hundreds more back into Gaza as hostages.

Israeli and American officials have repeatedly invoked self-defense to explain the violence in Gaza; self-defense is also expected to shape Israel's arguments in The Hague.

But self-defense cannot excuse or justify acts of genocide, and Israel's assault on Gaza is a wildly disproportionate response to the crimes of Oct. 7. Israel did not promise, nor did it execute, a sharply targeted retaliation against Hamas (whose leaders run their political operations out of Qatar) or a strategic hunt for the hostages.

Israel has rescued only a single hostage — and Israeli soldiers shot dead three Israeli hostages who were waving a white flag and begging for rescue, later explaining they mistook them for Palestinians. Almost all of the 110 Israeli hostages who've made it home were released by truce, negotiation and prisoner exchange.

Within hours of the Hamas attack, Israel imposed a brutal blockade on the Gaza Strip, cutting off electricity, water, fuel and food to a trapped population of roughly 2.2 million, about half of whom are children. The blockade itself amounted to the [war crime](#) of collective punishment, but that was only the curtain raiser. Within hours, the bombs began to fall — and have continued to this day.

In an Israeli television clip cited by South Africa in its application, Col. Yogev Bar-Sheshet spoke from Gaza: "Whoever returns here, if they return here after, will find scorched earth," he said. "No houses, no agriculture, no nothing. They have no future."

Israel has killed over 23,000 people in Gaza, according to the Gazan health ministry. More than 9,000 of the dead are children. More than 1,000 children had undergone agonizing amputations, sometimes with no anesthesia available, by late November, [UNICEF says](#). Women giving birth have also been forced to undergo cesarean sections without anesthesia, [according to](#) doctors in Gaza. Entire neighborhoods are crushed, and more than 85 [percent](#) of the population has been displaced.

To understand this extraordinary spasm of violence as an act of national self-defense, you'd have to accept that Israel's only chance for safety depends upon Gaza being crushed and emptied — by death or displacement — of virtually all Palestinians.

And, indeed, Israeli officials have said as much.

Tzipi Hotovely, Israel's ambassador to Britain, recently [explained to](#) the British TV host Iain Dale that Israel had to lay waste to Gaza because "every school, every mosque, every second house" was connected to a tunnel used by Hamas.

“That’s an argument for destroying the whole of Gaza, every single building in it,” Mr. Dale said.

“Do you have another solution?” Ms. Hotovely replied.

As the arguments at The Hague drew near, Israeli officials tried to soften their image.

On Tuesday, the Israeli military [tweeted out a video](#) insisting (in English) that “our war is against Hamas, not the people of Gaza.” Israel’s

[Channel 12 reported](#)

that Mr. Netanyahu warned his ministers to be cautious what they say about the war. “Choose your words carefully,” Mr. Netanyahu

[reportedly said](#)

, despite his own violent rhetoric.

The Israeli government spokesman Eylon Levy has repeatedly called the South African case a “[blood libel](#)

” — a reference to antisemitic European conspiracy theories that have fueled the persecution of Jews since the Middle Ages. “History will judge you, and it will judge you without mercy,” Mr. Levy said, addressing the South African government.

The conviction that South Africa is carrying on an ancient and despicable tradition of antisemitism touches on the extreme sensitivities surrounding this case.

Contemporary notions of war crimes and genocide emerged from the horrors of the Holocaust. To hear the charge of genocide turned against the Jewish state often provokes a visceral disbelief among people — including many Americans — who were carefully educated about the Holocaust while the desperate plight of Palestinians was downplayed or ignored.

Raz Segal, an Israeli historian and genocide expert who [has argued](#) that Israel’s actions in Gaza are “a textbook case of genocide,” recently described to me this cognitive dissonance.

"The idea that the Jewish state could commit war crimes, let alone genocide, becomes from the beginning an unthinkable idea," said Dr. Segal, a professor at Stockton University in New Jersey. "Impunity for Israel is baked into the system."

Speaking before the tribunal on Thursday, the South African barrister Max du Plessis [argued](#) that Israel's decades-long oppression of Palestinian rights must be regarded as crucial context of the violence in Gaza, which he said "is not correctly framed as a simple dispute between two parties."

Israel, he pointed out, is an occupying power "that has subjected the Palestinian people to an oppressive and prolonged violation to their rights to self-determination for more than half a century. And those violations occur in a world where Israel for years has regarded itself as beyond and above the law."

The word "genocide" rings loudly in our imagination. We think of Rwanda, Bosnia, the Armenians, the Trail of Tears and, of course, the Holocaust. I have heard many people balk at the suggestion that Gaza could be experiencing genocide. The Holocaust, after all, wiped out over 60 percent of European Jews. Israel's war — instigated, no less, by the murder of Jews — has killed about 1 percent of the Palestinians in Gaza. One percent is terrible, of course, but genocide?

Under the genocide convention, though, the term describes an intent to wipe out a defined group of people and taking steps to achieve that end. There is no threshold of death or proportion of death that must be reached. It is possible to kill a relatively small number of people but still commit an act of genocide.

We should approach this question humbly, because we — Americans, the West — have repeatedly shown that we are good at recognizing genocide only in retrospect. Virtually every cataclysm we now know as genocide, including the Holocaust, was met, first, with doubt and linguistic quibbling until finally — and much too late — a declaration was made.

Rwanda, often mentioned just after the Holocaust in the dirty annals of genocide, was

acknowledged as such only after Europeans and Americans wasted precious weeks prevaricating and dragging their feet, leery of intervention, while U.S. officials [refused](#) to say the word “genocide” in public. Denial of the Bosnian genocide has continued to this day.

When I read the document assembled by South Africa, my mind reeled: How could it happen? How was it allowed to happen?

The harrowing details from Gaza go on and on. The crushing of the medical system. The slaughter of aid workers. The killing of journalists. The war on libraries, houses of worship and culture. The destruction of families and economic needs and possibility itself.

*Nowhere is safe in Gaza.* This line is repeated in the South African suit. Most of the people are starving. Around 70 percent of the dead are women and children and two mothers are killed every hour, the [United Nations has estimated.](#)

On Thursday, the South African advocate Tembeka Ngcukaitobi referred to Israel's denial of fuel and water to Gaza.

“This admits of no ambiguity: It means to create conditions of death of the Palestinian people in Gaza,” Mr. Ngcukaitobi said. “To die a slow death because of starvation and dehydration or to die quickly because of a bomb attack or snipers. But to die, nevertheless.”

The destruction of bakeries, water pipes, sewerage and electricity networks. The hoisting of Israeli flags over the wreckage. Calls from Israel's government to [return settlers](#) to Gaza.

I don't have to wonder how it could have been allowed to happen. It is happening now, and we've all been watching.

[Megan K. Stack](#), a contributing Opinion writer, covered the Middle East as a correspondent for The Los Angeles Times.

